

**SOBRIETY PROGRAM GUIDELINES**  
**Office of Attorney General**

2013

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# **I. GENERAL PROVISIONS**

## **A. Policy Statement**

The 60<sup>th</sup> Legislative Assembly, in Section 11 of Senate Bill 2003, authorized the Attorney General to establish a sobriety program pilot project in one or more judicial districts of the state. The sobriety program involved coordination among state, county, and municipal agencies. The Attorney General, in cooperation with law enforcement, the judiciary, the Department of Corrections and Rehabilitation, and the Department of Transportation Traffic Safety Division, was authorized to develop guidelines, policies and procedures, and to establish user fees for a sobriety program pilot project.

The 61<sup>st</sup> Legislative Assembly, in House Bill 1306, authorized the Attorney General to expand the twenty-four seven ("24/7") sobriety program to all judicial districts in the state. The 24/7 sobriety program implements alternatives to incarceration for offenders charged with, or convicted of, driving under the influence of alcohol or controlled substances, domestic violence, abuse or neglect of a child, or other offenses in which alcohol or controlled substances are involved. The 24/7 sobriety program includes twice-per-day breath alcohol testing, remote electronic alcohol monitoring, and drug testing. The courts were given the discretion to order an offender to participate in the 24/7 sobriety program as a condition of bond or pre-trial release and may also order an offender to participate in the program as a condition of sentence or probation. The North Dakota Parole Board was also authorized to order a parolee to participate in the program as an intermediate sanction or condition of parole.

The 63<sup>rd</sup> Legislative Assembly, in House Bill 1302, authorized the 24/7 sobriety program to be used as a condition for temporary restricted driver's licenses, and also directed that the 24/7 sobriety program be used by the Juvenile Court for alcohol-related driving violations under the Juvenile Court Act, and as a mandatory condition of probation for a violation of N.D.C.C. § 39-08-01 or equivalent ordinance.

These guidelines are meant to assist the district courts, municipal courts, law enforcement agencies, and the North Dakota Department of Transportation in the administration of the 24/7 sobriety program. The guidelines, and offenders' participation in the program, are subject to the orders of the District Courts, Municipal courts, and Juvenile Courts and the requirements of the North Dakota Department of Transportation under Title 39 of the North Dakota Century Code.

## **B. Definitions.**

1. "Alcohol concentration" means the alcohol content of blood, breath, or urine by weight.
2. "Breath test" means the collection of a breath sample to measure breath alcohol concentration.
3. "Court" means a district court or municipal court in the state of North Dakota.
4. "Drug patch" means an absorbent body perspiration collection patch used to detect the presence of controlled substances, including cocaine, marijuana, amphetamines, methamphetamine, phencyclidine, barbiturates, benzodiazepines, methadone, and opiates, including heroin, morphine, codeine, hydrocodone, and oxycodone.
5. "Juvenile offender" means an individual ordered by the Juvenile Court to participate in the 24/7 sobriety program in accordance with N.D.C.C. §§ 27-10-10 or 27-10-31 and includes minors in consumption while driving.
6. "Offender" means an individual charged or found guilty of a violation of N.D.C.C. § 39-08-01 or equivalent ordinance, domestic violence, abuse or neglect of a child, or other offenses in which alcohol or controlled substances are involved. The term "offender" includes offenders released on bond, pre-trial release, and pre-sentencing release, offenders who have pled guilty to or have been found guilty of, a qualifying offense, probationers subject to supervised or unsupervised probation, and parolees. Where the context of these guidelines requires, the term offender includes juvenile offenders.
7. "Program" means the Attorney General's twenty-four seven sobriety program authorized in N.D.C.C. § § 54-12-27 through 54-12-31.
8. "Program administrator" means the representative of the Attorney General's office designated to oversee the twenty-four seven sobriety program.
9. "Prosecutor" means a state's attorney, assistant state's attorney, city attorney, or assistant city attorney in the state of North Dakota, and includes an assistant attorney general in the Office of Attorney General who is acting as a prosecutor.

10. "Qualifying offense" includes a violation of N.D.C.C. § 39-08-01 or equivalent ordinance, domestic violence, abuse or neglect of a child, or another offense in which alcohol or controlled substances are involved.
11. "Remote electronic alcohol monitoring" means continuous alcohol monitoring through the use of an installed electronic bracelet capable of taking alcohol readings from an offender's skin to determine alcohol consumption twenty-four hours per day that may be monitored at another location by way of an analog telephone line, electronic digital transmission, or computer download.
12. "Repeat offender" means an offender who has been charged with, or convicted of, a second or third violation of N.D.C.C. § 39-08-01 or equivalent ordinance in the seven years prior to the offender's most recent offense, or an offender who has been charged with a fourth or subsequent violation of N.D.C.C. § 39-08-01 or equivalent ordinance regardless of the length of time since the previous offense.
13. "System user" means a peace officer, correctional officer, test-site operator, or other testing site personnel designated by a law enforcement agency or correctional facility administrator to enter information into the Sobriety System Information System.
14. "Testing site" means the facility, including a Sheriff's department, correctional facility or location designated by a Sheriff, or such other location authorized and approved by the Attorney General, where the 24/7 sobriety program will be administered, including on-site breath testing, drug patch and urinalysis testing, installation of remote electronic alcohol monitoring equipment, collection of program fees from offenders, and to enter offender information into the Sobriety Program Information System.
15. "Testing site officer" means a peace officer, correctional officer, or test-site operator designated by a Sheriff or correctional facility administrator to administer the 24/7 sobriety program, including conducting twice-per-day alcohol breath testing, drug patch and urinalysis testing, installing remote electronic alcohol monitoring equipment and collecting program fees from offenders, and entering offender information into the Sobriety Program Information System.
16. "Urinalysis testing" means urine specimen collection procedures to detect the presence of alcohol and controlled substances, including cocaine, marijuana, amphetamines, methamphetamine, phencyclidine, barbiturates, benzodiazepines, methadone, and opiates, including heroin, morphine, codeine, hydrocodone, and oxycodone.

### **C. Testing Site**

1. The Sheriff in each county shall designate a 24/7 sobriety program testing site, or sites, in the Sheriff's respective county, to conduct twice-per-day alcohol breath testing, drug patch and urinalysis testing, installation of remote electronic alcohol monitoring equipment, the collection of program fees from participants in the 24/7 sobriety program, and to enter offender information into the Sobriety Program Information System.
2. The testing site must be a Sheriff's department office, correctional facility, or county courthouse room in which an offender may be safely detained for a violation of the 24/7 sobriety program and taken into custody, unless the Attorney General has authorized and approved a different location as a testing site.
3. The testing site may never permit a juvenile offender who is participating in the 24/7 sobriety program under an order of the Juvenile Court to enter into a secure facility or a secure part of a facility or be securely detained absent the written authorization of the referring Juvenile Court.

### **D. 24/7 Sobriety Testing as a Condition of Bond or Pre-trial Release**

1. The district courts and municipal courts, in their discretion, may require an offender to refrain from the use of alcohol and impose a condition of alcohol testing in a bond order or as a condition of bond or pre-trial release, not only to assure the offender's attendance at scheduled court appearances, but to further public safety by seeking to prevent the commission of offenses that are similar to the charged offense.
2. The "look-back" period for a second and third time driving under the influence violation is seven years. There is no look-back period for a fourth or subsequent driving under the influence violation, regardless of the length of time since the previous offense. The district courts and the municipal courts have the authority to order a second or third offender to participate in the 24/7 sobriety program as a bond or pre-trial release condition even though it has been more than seven years since the offender's most recent driving under the influence violation.

3. A court may order a repeat offender to not consume any alcoholic beverages or controlled substances and participate in the 24/7 sobriety program as a condition of bond or other pre-trial release.
4. If a district court or municipal court has ordered an offender to refrain the use of alcohol as a condition of bond and has ordered participation in the 24/7 sobriety program as condition of bond or pre-trial release, the court shall order the offender to pay the program fees unless the court has made a finding payment of the fees constitutes a hardship on the offender.<sup>1</sup>
5. A court may order an offender charged with a first time offense of driving under the influence in violation of N.D.C.C. § 39-08-01 or equivalent ordinance to not consume any alcoholic beverages or controlled substances and participate in the 24/7 sobriety program as a condition of bond or other pre-trial release if the court determines the offender's participation is appropriate based on factors including the offender's prior criminal history, the level of the offender's alcohol concentration if known, whether passengers, including children were present in the offender's vehicle, whether the offender was involved in a crash, and whether any injuries or fatalities were caused by the crash. Absent a waiver based on a finding of hardship, the court shall order the offender to pay all program fees.

**E. 24/7 Sobriety Testing as a Condition of Pre-Sentencing or Post-Conviction Release**

1. If an offender has pled guilty to, or has been found guilty of, a qualifying offense, a court may order the offender not to consume any alcoholic beverages or controlled substances and to participate in the 24/7 sobriety program as a condition of pre-sentencing release or as a condition of the offender's sentence or probation. Absent a waiver based on a finding of hardship, the court shall order the offender to pay all program fees.
2. If an offender has pled guilty to, or has been found guilty of, a violation of N.D.C.C. § 39-08-01 or equivalent ordinance, the offender is responsible for payment of all 24/7 sobriety program fees and the sentencing court may not waive the fees for a violation of N.D.C.C.

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<sup>1</sup> A municipal court or district court may only waive the fees, or part of the fees upon a finding of hardship when participation in the 24/7 sobriety program is a condition of bond or pre-trial release. A municipal court or district court **may not** waive the 24/7 sobriety program fees in whole or in part if the offender is participating in the 24/7 sobriety program as a condition of probation or as a condition of a temporary restricted driver's license. See N.D.C.C. § 39-08-01(7).

§ 39-08-01 or equivalent ordinance. This includes fees for sobriety breath testing twice per day seven days per week, electronic alcohol monitoring, urine testing, and drug patch testing. See N.D.C.C. § 39-08-01(7).<sup>2</sup>

3. Probation is mandatory for one year for a second or third violation of N.D.C.C. § 39-08-01 or equivalent ordinance within a seven year period, and participation in the 24/7 sobriety program is a mandatory condition of probation.
4. Probation is mandatory for two years for a fourth or subsequent violation of N.D.C.C. § 39-08-01 or equivalent ordinance and participation in the 24/7 sobriety program is a mandatory condition of probation.
5. Probation must be supervised for third and fourth or subsequent violations of N.D.C.C. § 39-08-01 or equivalent ordinance.
6. The Parole Board may order that a parolee not consume any alcoholic beverages or controlled substances and participate in the sobriety program as a condition of parole. Absent a waiver based on a finding of hardship, the Parole Board shall order the parolee to pay all program fees. The Parole Board may not authorize a waiver of fees if the offender is participating in the 24/7 sobriety program for an alcohol-related driving offense under Title 39 of the North Dakota Century Code.

**F. Participation in the 24/7 Sobriety Program as a Condition of a Temporary Restricted Driver's License**

1. The Driver's License Division of the North Dakota Department of Transportation shall determine whether an offender meets the requirements to have a temporary restricted driver's license with participation in the 24/7 sobriety program as a condition of the temporary restricted driver's license. The testing site may not determine whether an offender may have a temporary restricted drivers' license.
2. If the Driver's License Division of the North Dakota Department of Transportation determines an offender is eligible for a Temporary

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<sup>2</sup> Refusal to submit to chemical testing, including blood, breath, or urine testing, is also a violation of N.D.C.C. § 39-08-01 on and after July 1, 2013 and will subject the offender to the same penalties applicable to an offender who has pled guilty or has been found guilty of DUI after submission to chemical testing.



Restricted Driver's License with the condition that the offender participate in the 24/7 sobriety program as a condition of the temporary restricted driver's license, the Driver's License Division shall provide a form to the offender to submit to a 24/7 Sobriety Program testing site in order for the offender to participate in the 24/7 Sobriety Program as a condition of the offender's temporary restricted driver's license.

3. The Department of Transportation Driver's License Division may allow an offender who is under suspension for an offense committed prior to July 1, 2013, to have a temporary restricted driver's license.
4. If the offender is participating in the 24/7 Sobriety Program as a condition of a temporary restricted driver's license, the offender is responsible for all 24/7 sobriety program fees, which may not be waived in part or in whole.

#### **G. Statement of Participation.**

1. An offender in the 24/7 sobriety program pursuant to an order of the court shall execute a statement in the presence of the testing site officer or the clerk of the court, or if on supervised probation, in the presence of a parole and probation officer, acknowledging and agreeing to the terms and conditions of the referring court ordering the offender to participate in the sobriety program.
2. An offender in the 24/7 sobriety program pursuant to an order of the Parole Board shall execute a statement in the presence of the testing site officer or a parole and probation officer acknowledging and agreeing to the terms and conditions of the Parole Board ordering the parolee to participate in the sobriety program.
3. If a juvenile offender is participating in the 24/7 sobriety program pursuant to an order of the Juvenile Court, the juvenile offender, and the juvenile offender's parent(s), legal guardian, or legal custodian, shall execute a statement in the presence of a testing site officer acknowledging and agreeing to the terms and conditions of the Juvenile Court ordering the juvenile offender to participate in the sobriety program.
4. If an offender is participating in the 24/7 sobriety program as a condition of a temporary restricted driver's license, the offender shall execute a statement in the presence of the testing site officer acknowledging and agreeing to the terms and conditions of the Driver's License Division of the Department of Transportation as a restriction of the temporary restricted driver's license.

## **H. Sobriety Program Information System.**

1. At the time of intake, a testing site officer shall obtain necessary offender identification information and enter it into a Sobriety Program Information System. The information must include general participant information including the offender's name, address, date of birth, social security number, and employment or school. The social security number must be kept confidential pursuant to N.D.C.C. Sec. 44-04-28.
2. The testing site officer shall check the Sobriety Program Information System for the offender and complete the following:
  - a. If the offender's or parolee's name does not appear in the Sobriety Program Information System, the testing site shall make a new entry, take a digital photograph of the offender, and download the picture into the computer file.
  - b. If the offender is listed in the Sobriety Program Information System, and the offender is back in the 24/7 sobriety program for the same case, the testing site officer shall update the offender's file information, photograph the offender and download the photograph into the Sobriety Program Information System.
  - c. If the offender has entered into the 24/7 sobriety program for a different case than the offender's previous participation in the 24/7 sobriety program, the testing site shall make a new entry, take a digital photograph of the offender, and download the picture into the computer file.
  - d. All information in the Sobriety Program Information System will be kept current and will be kept confidential when required by law.

## **I. Sobriety Program Fees**

### **1. Sobriety Program On-Site Testing Fees.**

- a. Each offender participating in on-site breath testing shall pay one dollar (\$1.00) per test payable in advance on a weekly basis, or in accordance with a schedule established at the testing site. This does not preclude the offender from paying in advance for a period of time than one week.

**2. Remote Electronic Alcohol Monitoring Fees.**

- a. Each offender participating in remote electronic alcohol monitoring shall pay a fee of five dollars (\$5.00) per day, payable in advance on a two-week basis. If the offender is participating in remote electronic alcohol monitoring with a wireless system, the offender shall pay a fee of six dollars (\$6.00) per day. Each offender participating in electronic alcohol monitoring shall also pay an activation fee of twenty-five dollars (\$25.00) and a deactivation fee of twenty-five dollars (\$25.00). The activation and deactivation fees must be paid at the time of installation.

**3. Urine Analysis Testing Fees.**

- a. Each offender participating in urinalysis testing shall pay a fee of five dollars (\$5.00) per test. If the offender has a positive urine test, the defendant shall pay the actual cost for laboratory confirmation of the urine sample. The Attorney General's Office will not provide kits for urinalysis testing.
- b. The duration of urinalysis testing will be determined by the court or the Parole Board. The time and location of the urine testing will be determined by the individual sheriff's offices.

**4. Drug Patch Testing Fee.**

- a. Each offender participating in drug patch testing shall pay a fee of fifty dollars (\$50.00) per drug patch.
- b. The duration of the drug patch testing will be determined by the court or the Parole Board. The time and location of the drug patch testing will be determined by the individual testing sites.

**5. Juvenile Offender Fees.**

- a. The same fees applicable to adult offenders are applicable to juveniles ordered by the Juvenile Court to participate in the 24/7 sobriety program.

**6. Method of Payment.**

- a. Each offender shall pay testing fees in advance at a minimum of a weekly basis. This does not preclude the offender from paying

in advance for a longer period of time. The offender shall pay the testing or monitoring fees in cash or money orders. No personal checks will be accepted. No test will be administered before payment is received. The officer shall provide a receipt to the offender for testing or monitoring fees paid and enter a record of the payment into the Sobriety Program Information System to track each offender's payments.

- b. If an offender has a positive balance upon completion or termination of the sobriety program, the offender will receive a refund for the balance, unless the balance is under \$5.00.

**7. Twenty-Four Seven Sobriety Program Funds.**

- a. The testing site shall collect program fees from offenders participating in the 24/7 sobriety program, including fees for twice-per-day breath testing, urine testing, drug patch testing, installation and deactivation fees for remote electronic alcohol monitoring devices, and remote electronic monitoring daily fees.
- b. In accordance with N.D.C.C. § 54-12-30, except for the daily fees collected for remote electronic alcohol monitoring, the program fees may only be applied to twenty-four seven sobriety program support services, equipment maintenance and replacement, and compliance with the 24/7 sobriety program.
- c. In accordance N.D.C.C. § 54-12-30, the daily fees collected for remote electronic monitoring to the Attorney General's twenty-four seven sobriety program fund.
- d. The Sheriff may request the Attorney General to approve a modification of the fees based on a showing of necessity.

**8. Failure to Pay Program Fees.**

- a. If an offender fails to pay for any program fees required under the 24/7 sobriety program and the offender is participating in the 24/7 sobriety program as a condition of bond, the testing site shall report the offender's failure to pay program fees to the referring court.
- b. If an offender fails to pay for any program fees required under the 24/7 sobriety program and the offender is participating in the 24/7 sobriety program as a condition of supervised parole or probation, the testing site shall report the offender's failure to

pay program fees to the offender's supervising parole and probation officer, as may be applicable.

- c. If the offender is on unsupervised probation, the testing site shall report the violation to the prosecuting attorney. The offender may be taken into custody for violation of the sobriety program by order of the court or an arrest warrant may be issued in the offender's absence.
- d. If the offender is a juvenile offender participating in the program under an order of the Juvenile Court, the testing site shall report the juvenile offender's failure to pay the program fees to the Juvenile Court.

**9. Restitution for Lost or Damaged Equipment.**

- a. Any amount owed by the offender as restitution for lost or damaged equipment related to twice-per-day testing, urine testing, or drug patch testing, will be assessed to the offender, to be paid into the governing body's twenty-four seven sobriety program fund.
- b. Any amount owed by the offender as restitution for lost or damaged equipment related to remote electronic monitoring equipment will be assessed to the offender, to be paid into the Attorney General's twenty-four seven sobriety program fund.
- c. If an offender fails to pay for any restitution, the testing site officer shall report the offender's failure to pay restitution to the referring court, or if the offender is a parolee or probationer, to the parolee or probationer's supervising parole and probation officer. The offender may be taken into custody or an arrest warrant may be issued in the offender's absence.

## **II. ON-SITE TESTING PROCEDURES.**

### **A. Offender Placement in the Sobriety On-Site Breath Testing Program.**

1. An offender charged with a qualifying offense is eligible for participation in an on-site sobriety testing program if a court has ordered the offender to participate in the program as a condition of bond or pre-trial release, as a condition of pre-sentencing release, or as a condition of the offender's sentence or probation.
2. The Parole Board may order an offender to participate in on-site sobriety testing under the 24/7 Sobriety Program.
3. When the court has ordered an offender to participate in on-site testing in the 24/7 sobriety program as a condition of bond or pre-trial release, as a condition of pre-sentencing release, or as a condition of sentence or probation by the court, or the Parole Board has ordered an offender to participate in on-site testing, the offender shall report to the testing site designated by the court or the supervising parole and probation officer for admission to the program no later than the next business day after the court has issued its order requiring the offender to participate in the 24/7 sobriety program. The offender shall produce identification and a copy of the court order or Parole Board order authorizing the offender to participate in the sobriety program. At that time, a testing site officer shall review the program requirements, including fees and consequences of any violations, with the offender, and enter offender information into the Sobriety Program Information System.
4. If an offender has been ordered to participate in the 24/7 sobriety program, but the offender is in physical custody, the offender may not be placed into the program until the offender is released from physical custody. An offender on work release may be required to participate in the program.

5. The Juvenile Court is required to order a juvenile offender to participate in the 24/7 sobriety program if the juvenile offender makes an admission, or is found to have committed, either the delinquent act of driving under the influence, or the unruly act of minor in consumption of alcohol and having an alcohol concentration of at least .02 within two hours of driving or being in actual physical control of a motor vehicle. This requirement applies in both informal adjustment and formal petition Juvenile Court cases.
6. An offender ordered to participate in the 24/7 sobriety program shall execute a participation statement at the testing site, or in the presence of the clerk of court or a parole and probation officer, to acknowledge and agree to the terms and conditions of the referring court or the Parole Board ordering the offender to participate in the program. The offender will receive a copy of the program requirements and the statement.
7. If the offender ordered to participate in the 24/7 sobriety program as a condition of bond or other pre-trial release or pre-sentencing release refuses to sign the sobriety program participation statement, the testing site officer shall detain the offender and notify the referring or sentencing court. The referring court may revoke, modify, or set other conditions of bond or pre-trial release or pre-sentencing release.
8. If the offender refuses to sign the 24/7 sobriety program participation statement and the offender is on unsupervised probation, the testing site officer shall detain the offender and notify the prosecutor and the sentencing court. The referring court may revoke, modify, or set other conditions of probation.
9. If the offender refuses to sign the 24/7 sobriety program participation statement and the offender is on supervised probation, the testing site shall detain the offender and notify the offender's supervising parole and probation officer. The parole and probation officer may request the sentencing court to modify or revoke the offender's probation.
10. If the offender refuses to sign the 24/7 sobriety program participation statement and the offender is a parolee, the testing site officer shall detain the offender and notify the offender's supervising parole and probation officer. The parole and probation officer may request the Parole Board modify or revoke the offender's parole.

11. If the offender refuses to sign the sobriety program participation statement and the offender is in the 24/7 sobriety program as a condition of a temporary restricted driver's license, the testing site officer shall notify the Department of Transportation Driver's License Division.
12. If a juvenile offender has been ordered to participate in the 24/7 Sobriety Program and the juvenile offender and the juvenile offender's parent(s), legal guardian, or legal custodian refuses to sign the 24/7 sobriety program participation statement, the testing site shall notify the Juvenile Court. The testing site may not detain the juvenile without the written authorization of the Juvenile Court.

**B. Administration of Twice-per-day Breath Tests.**

1. All offenders in the 24/7 sobriety program on-site breath testing program shall submit to a twice-daily breath test seven days per week. The tests will be given on time intervals of approximately 12 hours in between tests and will be at approximately the same times each day.
2. If an offender is participating in the 24/7 sobriety program as a condition of bond or unsupervised probation, the offender may request breath testing at another testing site with the approval of the referring court. The offender shall provide notice to the offender's original testing site and the proposed testing site. The offender may be required to pay testing fees to the proposed testing site. The offender shall be responsible for making the arrangements between the test sites.
3. If the offender is participating in the 24/7 sobriety program as a condition of supervised parole or probation, the offender shall submit to breath testing at the site designated by the offender's supervising parole and probation officer. The offender may be required to pay testing fees to the proposed testing site.
4. If the offender is participating in the 24/7 sobriety program on-site breath testing program solely as a condition of a temporary restricted driver's license, the offender shall submit to testing at the test site in the offender's county of residence. The offender may submit to testing at another testing site upon reasonable notice to the offender's original testing site and the proposed testing site. The offender may be required to pay testing fees to the proposed testing site. The offender shall be responsible for making the arrangements between the test sites.



5. Unless the referring or sentencing court has directed otherwise, or unless a supervising probation and parole officer has directed otherwise, a testing site may coordinate with another testing site to transfer testing at the request of the offender. The offender may be required to pay testing fees to the proposed testing site.
6. If a juvenile offender is participating in the 24/7 sobriety program on-site breath testing program pursuant to an order of the Juvenile Court, the juvenile offender shall submit to testing at the test site designated by the Juvenile Court. The juvenile offender may submit to testing at another testing site with the written approval of the Juvenile Court. The juvenile offender may be required to pay testing fees to the proposed testing site. The juvenile offender, or the juvenile offender's parents, shall be responsible for making the arrangements between the test sites
7. A juvenile offender may not be subject to breath testing in a secure part of a law enforcement agency or correctional facility.
8. An offender may not consume or ingest any substance, including alcohol in any form, mouthwash, toothpaste, medicine, or coffee, and may not use any tobacco products, including chewing tobacco, cigarettes, or cigars, within fifteen minutes before a breath test.
9. An offender shall arrive before the scheduled time for a breath test to ensure the test is administered at the correct time. If an offender arrives early, the test site may require the offender to wait until the offender's scheduled time for the breath test to be administered.
10. The testing site officer shall perform a breath test as follows:
  1. Breath testing must be in accordance with the operating manual for the breath testing device.
  2. The officer shall record the test result and the time of the test in the Sobriety Program Information System.
11. If the breath test result indicates the presence of alcohol, the testing site officer shall have the offender wait for 15 minutes and administer another test.

**C. Excused Absence.**

1. The referring court may excuse an offender from a scheduled breath test. There must be a signed order from the court, or if the offender is

on supervised parole or probation, there must be signed authorization from the offender's supervising parole and probation officer.

2. The testing site may excuse an offender from a scheduled breath test based upon exigent circumstances, including inclement weather, emergencies, and legitimate health problems.
  - a. The testing site shall record the excused absence in the Sobriety Program Information System.
3. An offender will not be excused from a scheduled breath test because the offender failed to make appropriate travel arrangements.

#### **D. Recording Test Results.**

1. The testing site where the breath test was administered shall record the result of the breath test in the Sobriety Program Information System.

#### **E. Violations.**

##### **1. Positive Breath Test.**

- a. A breath alcohol concentration of at least 0.02 by weight after a second breath test constitutes a violation of the twenty-four seven sobriety program. It is also a violation if the offender admits to the consumption of alcohol.
- b. If there is a violation, the testing site shall detain the offender and notify the referring court and the prosecutor of the violation. The offender shall be taken into custody pending further court proceedings. If the offender is a supervised probationer, the testing site shall also notify the supervising probation officer of the violation and that the offender has been detained and taken into custody.
- c. The testing site shall complete an incident report and forward a copy of the report to the prosecutor or the court. If the offender is a supervised probationer or parolee, the testing site shall send the incident report to the offender's supervising parole and probation officer.
- d. If an offender has a positive breath test or admits to the consumption of alcohol, and the offender has a temporary

restricted driver's license with participation in the 24/7 sobriety program as a condition of the temporary restricted driver's license, the testing site shall notify the Driver's License Division of the Department of Transportation of the violation.

- e. If an offender has a positive breath test, or admits to the consumption of alcohol, and leaves the testing site before the offender can be detained, the testing site shall notify a law enforcement officer, the prosecutor and the court as reasonably soon as possible. The court may issue a bench warrant to take the offender back into custody. If the offender is a supervised probationer or parolee, the testing site officer shall notify the offender's supervising parole and probation officer as reasonably soon as possible.
- f. If a juvenile offender has a positive breath test, or admits to the consumption of alcohol, the testing site shall notify the Juvenile Court as reasonably soon as possible. The juvenile offender may not be held in secure detention absent written authorization from the Juvenile Court.
- g. The testing site shall record the violation in the Sobriety Program Information System.

## **2. Failure to Appear for Scheduled Testing.**

- a. If an offender fails to contact the testing site to participate in the program, the testing site shall notify the prosecutor and the court. The court may issue a bench warrant to take the offender into custody.
- b. If an offender fails to contact the testing site to participate in the program as a condition of a temporary restricted driver's license, the testing site shall notify the Driver's License Division of the North Dakota Department of Transportation.
- c. If an offender fails to appear for a scheduled breath test, the testing site shall immediately notify the prosecutor and the court. The court may issue a bench warrant directing a law enforcement officer to take the offender back into custody and to appear before the court.
- d. If an offender fails to appear for a scheduled breath test and the offender is an unsupervised probationer, the testing site shall immediately notify the prosecutor and the court. The court may issue a bench warrant directing a law enforcement officer to

take the offender back into custody and to appear before the court.

- e. If an offender fails to appear for a scheduled breath test and the offender is a supervised probationer or parolee, the testing site shall immediately notify the offender's supervising parole and probation officer that the offender failed to show for testing.
- f. If the offender is a juvenile offender, the testing site shall immediately notify the Juvenile Court that ordered the juvenile to participate in the 24/7 sobriety program of the violation. A juvenile may not be taken into secure detention for a violation of the 24/7 sobriety program without the written authorization of the Juvenile Court.
- g. The testing site officer shall record the failure to appear in the Sobriety Program Information System.

### **3. Late Arrival.**

- a. If an offender arrives up to one-half hour late for a scheduled breath test more than two times in a four-month period, the offender may be considered to be in violation of the program unless the offender has made prior approved arrangements with the testing site.
- b. An offender who arrives more than one-half hour late for a scheduled breath test without having made prior approved arrangements with the testing site is in violation of the 24/7 sobriety program and may be immediately taken into custody by a law enforcement officer. Alternatively, the court may issue a bench warrant for a law enforcement officer to take the offender into custody and appear before a court.
- c. If an offender arrives up to one-half hour late for a scheduled breath test more than two times in a four month period without having made prior approved arrangements with the testing site, or if an offender arrives more than one-half hour late for a scheduled breath test without making prior approved arrangements with the test site, and the offender is participating in the 24/7 sobriety program as a restriction for a temporary restricted driver's license, the testing site shall notify the Driver's License Division of the North Dakota Department of Transportation of the violation.

- d. If an offender arrives up to one-half hour late for a scheduled breath test more than two times in a four month period without having made prior approved arrangements with the testing site, or if an offender arrives more than one-half hour late for a scheduled breath test without making prior approved arrangements with the test site, and the offender is participating in the 24/7 sobriety program as a condition of unsupervised probation, the testing site shall immediately detain the offender and shall notify the prosecutor and the sentencing court.
- e. If an offender arrives up to one-half hour late for a scheduled breath test more than two times in a four month period without having made prior approved arrangements with the testing site, or if an offender arrives more than one-half hour late for a scheduled breath test without making prior approved arrangements with the test site, and the offender is participating in the 24/7 sobriety program as a condition of supervised probation, the testing site shall immediately detain the offender and notify the offender's supervising probation officer.
- f. If a juvenile offender arrives up to one-half hour late for a scheduled breath test more than two times in a four month period without having made prior approved arrangements with the testing site, or if a juvenile offender arrives more than one-half hour late for a scheduled breath test without making prior approved arrangements with the test site, and the juvenile offender is participating in the 24/7 sobriety program under an order of the Juvenile Court, the testing site shall notify the Juvenile Court of the violation. The juvenile may not be taken into secure detention for the violation without the written authorization of the Juvenile Court.

**F. Standing Orders for Violations of the 24/7 Sobriety Program.**

- 1. A court may issue a standing order establishing procedures for taking offenders into custody, for bench warrants, or for orders to show cause for offenders who have violated the sobriety program, including having a positive breath test, or failure to appear, or being late for on-site breath testing.

**G. Taking offenders into custody for violations of 24/7 sobriety program conditions.**

1. N.D.C.C. § 29-06-15(3) authorizes, but does not require, a law enforcement officer who has reasonable cause to believe an offender has violated a lawful order of the court that requires the individual to participate in the 24/7 Sobriety Program to immediately take the individual into custody without a warrant for a violation of the program. The individual may not be released from custody on bail or on the individual's recognizance unless the individual has made a personal appearance before a magistrate.
2. If an offender is voluntarily in the 24/7 Sobriety Program as a condition of a temporary restricted driver's license and is not subject to the 24/7 sobriety program as a condition of bond or probation and the offender commits a violation of the program, the offender may not be taken into custody.
3. A juvenile offender participating in the 24/7 sobriety program through the Juvenile Court may never be taken into secure detention for a violation of the 24/7 sobriety program; but instead, may only be placed in attendant care or other placement determined by the Juvenile Court. The juvenile offender may not be held in secure detention absent written authorization from the Juvenile Court.

### **III. REMOTE ELECTRONIC ALCOHOL MONITORING.**

#### **A. Factors for Eligibility for Remote Electronic Alcohol Monitoring include:**

1. The offender is charged with a qualifying offense and a court has ordered as a condition of bond, pre-trial release, pre-sentencing release, sentence or probation that the offender participates in the sobriety program.
2. The offender lives in a rural area and it is an unreasonable burden, or it may be dangerous, for the offender to personally report to a law enforcement agency or detention facility for breath alcohol testing.
3. Based on prior contact with law enforcement or the courts or the Parole Board, the offender is known to be at high risk for consumption of alcohol.
4. The offender has a revoked or suspended license and does not have a temporary restricted driver's permit or lawful alternative transportation for on-site testing.
5. A remote electronic alcohol monitoring bracelet ("bracelet") and the supporting equipment, including a modem, are available.
6. The offender is capable of wearing a bracelet and paying the daily monitoring fees and activation and deactivation fees.
7. If a juvenile offender has been ordered by the Juvenile Court to participate in the 24/7 sobriety program and the Juvenile Court has determined the juvenile should participate by remote electronic alcohol monitoring.

#### **B. Remote Electronic Alcohol Monitoring Procedure.**

1. The court shall advise the offender that as a condition of bond or other pre-trial release, pre-sentencing release, sentence, or probation, the offender shall be placed in the sobriety program and subject to the availability of remote alcohol monitoring equipment and the appropriateness of placement of the offender in the program, may be issued remote alcohol monitoring equipment. The testing site shall

advise the offender of the remote electronic alcohol monitoring requirements.

2. The offender shall report to a law enforcement agency or detention facility. A testing site officer shall advise the offender of the remote electronic alcohol monitoring requirements, have the offender sign a statement acknowledging the remote electronic alcohol monitoring requirements, install the bracelet, provide any other equipment as necessary, and schedule times for remote electronic alcohol monitoring reporting.
3. If an offender will be participating in the 24/7 sobriety program as a condition of a temporary restricted driver's license, the offender may, in the discretion of the testing site, and subject to the availability of the equipment, be issued remote alcohol monitoring equipment.
4. The testing site shall advise the offender as to all remote electronic alcohol monitoring equipment requirements, replacement costs and the offender's responsibility for any damaged, lost, or destroyed remote electronic alcohol monitoring equipment.
5. The offender must be within the range of the remote electronic alcohol monitoring equipment at reporting times scheduled by the testing site.
6. If a juvenile offender is participating in the 24/7 sobriety program, the Juvenile Court shall advise the juvenile offender and the testing site of the Juvenile Court's remote electronic alcohol monitoring requirements.

**C. Violations of Remote Electronic Alcohol Monitoring/  
Non-compliance Reporting.**

1. Violations of the remote electronic alcohol monitoring surveillance program include positive alcohol detection and obstruction, tampering, damaging, or removal of the bracelet or the supporting equipment, or failure to be within the range of the remote electronic alcohol monitoring at reporting times scheduled by the testing site.
2. The detection of a blood alcohol concentration at a level of at least .02 by weight or more constitutes positive alcohol detection in violation of the sobriety program requirements.



3. If the remote electronic alcohol monitoring test data cannot be communicated, the testing site monitoring the offender shall contact the offender and investigate if there has been a communication failure or a violation. If the offender is a parolee or probationer, the testing site officer shall notify the supervising parole and probation officer who will contact the offender and investigate if there has been a communication failure or a violation.
4. The testing site officer shall report all violations and communication failures to the court and the prosecutor, or if the offender is on supervised parole or probation, to the offender's supervising parole and probation officer.
5. If there has been a violation, the court may issue a bench warrant and order the offender be taken into custody. If the offender is on supervised parole or probation, the offender's supervising parole and probation officer shall make a determination whether to bring a petition for modification of the terms of supervision or for revocation of parole or probation.
6. The court may revoke or modify conditions of bond or pre-trial release, post-conviction release, sentence, or probation, upon hearing if there has been a violation, and may order the offender be taken into custody.
7. The Parole Board may revoke or modify conditions of parole if an offender violates conditions of remote electronic alcohol monitoring surveillance.
8. If a juvenile offender who has been placed on the 24/7 Sobriety Program by the Juvenile Court violates a condition of remote electronic alcohol monitoring surveillance, the testing site shall notify the Juvenile Court of the violation. A juvenile may not be taken into custody and placed in secure detention for a violation of remote electronic alcohol monitoring surveillance without the written authorization of the Juvenile Court.
9. If an offender violates a condition of remote electronic alcohol monitoring surveillance and the offender has a temporary restricted driver's license with participation in the 24/7 sobriety program as a condition of the temporary restricted driver's license, the testing site shall notify the Driver's License Division of the Department of Transportation of the violation.

10. The testing site officer shall also enter any electronic alcohol monitoring surveillance violation or communication failure into the Sobriety Program Information System.

**D. Removal of and Payment for Remote Electronic Alcohol Monitoring Bracelet and Supporting Equipment.**

1. Only testing site personnel may remove the bracelet from an offender, and only:
  - a. When the program is complete;
  - b. Upon order of the court;
  - c. If the offender is taken into custody;
  - d. If medically necessary;
  - e. If the bracelet malfunctions; or
  - f. For routine maintenance
  - g. If the offender has switched from remote electronic alcohol monitoring to twice-per-day breath testing.
2. The offender shall return all remote electronic alcohol monitoring equipment at the time of removal of the bracelet, unless another bracelet is installed on the offender.
3. The offender shall be responsible for all costs, including replacement and repair of a damaged bracelet, or other supporting equipment.

## **IV. URINALYSIS AND DRUG PATCH TESTING.**

### **A. Urinalysis Testing.**

1. Urinalysis testing may be at regular and random intervals.
2. If an offender has a positive sample, the testing site shall ask the offender whether the offender has used alcohol or controlled substances. If the offender admits using alcohol or controlled substances, the testing site shall request the offender sign a written admission.
3. If an offender's sample is positive for alcohol or a controlled substance, the offender is in violation of the program. If there is a violation, the testing site officer shall detain the offender and notify the referring court and the prosecutor of the violation. The testing site officer shall request a law enforcement officer to take the offender into custody pending further court proceedings. If the offender is a probationer or parolee, the testing site shall notify the offender's supervising parole and probation officer.
4. A positive sample may be sent to a laboratory for confirmation. If the offender admits to using alcohol or controlled substances and signs a written admission, it is not necessary to send the sample to a laboratory for confirmation.
5. If the offender defrauds the urine test, it is a violation of the program. If the offender defrauds the urine test, the testing site shall notify the referring court and the prosecutor of the violation. The testing site shall also notify request a law enforcement officer to take the offender into custody pending further court proceedings. If the offender is a probationer or parolee, the testing site shall notify the offender's supervising parole and probation officer.
6. Defrauding a urine test may also result in criminal penalties under N.D.C.C. § 12.1-11-07 or revocation of probation, if applicable, under N.D.C.C. § 12.1-32-07(3).
7. A court may issue its own standing order establishing procedures for taking offenders into custody, for bench warrants, or for orders to show cause for offenders who have a positive urine test for alcohol or controlled substances pending laboratory confirmation.

8. If a Juvenile Court has ordered a juvenile offender to be subject to urine testing under the 24/7 sobriety program, and the juvenile defrauds the test or submits a positive urine sample, the testing site shall notify the Juvenile Court that ordered the juvenile offender to submit to urine testing as part of the 24/7 sobriety program of the violation.

## **B. Drug Patch Testing.**

1. If an offender has been ordered to participate in the program by drug patch testing, the testing site shall place the drug patch on the offender in accordance with the manufacturer's instructions.
2. Only the testing site may remove the drug patch from the offender.
3. If the drug patch is positive for a controlled substance, or the drug patch has been tampered with, or if the drug patch has been removed without authorization from the testing site, the offender is in violation of the program.
4. If an offender is in violation of the program because of a positive drug patch, the testing site may detain the offender and notify the referring court and the prosecutor of the violation. If a licensed peace officer is not available at the testing site, the testing site may request a law enforcement officer to take the offender into custody pending further court proceedings. If the offender is a probationer or parolee, the testing site shall notify the offender's supervising parole and probation officer.
5. Used drug patches may only be removed at the testing site and only in accordance with the manufacturer's recommendations.
6. A court may issue its own standing order establishing procedures for taking offenders into custody, for bench warrants, or for orders to show cause for offenders who have a positive drug patch test for controlled substances pending laboratory confirmation.
7. If the Juvenile Court has ordered a juvenile offender to participate in the 24/7 sobriety program by drug patch testing, if the juvenile offender is in violation of the program because of a positive drug patch, the testing site shall notify the Juvenile Court of the violation. The juvenile offender may not be placed in secure detention without the written authorization of the Juvenile Court.



## **V. COMPLETION, TERMINATION, RE-ENTRY**

### **A. Completion or Termination.**

1. An offender's participation in the program ends upon completion of the program or termination of the program.
2. If the offender was in the program as a condition of bond or other pre-trial release, completion of the program means there has been a final disposition of the criminal offense, including acquittal or conviction and imposition of sentence, or if the offender was on pre-sentencing release, imposition of sentence.
3. If the offender has been assigned to the program as a condition of sentence or probation, completion of the program means the offender has met the established time and conditions of the sentence or probation set by the court. For unsupervised probation, the court will notify the testing site the offender has completed the program. For supervised probation, the supervising probation officer will notify the testing site the offender has completed the program.
4. Termination of the program means the court has determined that the offender will no longer participate in the program, either because the offender has violated the terms and conditions of the program, or because the court has determined the offender is not required to participate in the program.
5. If the offender is participating in the 24/7 Sobriety Program only as a condition of a temporary restricted driver's license, termination of the program means the offender will no longer participate in the program, either because the offender has violated the terms and conditions of the temporary restricted driver's license, or because the Driver's License Division has determined the offender is not required to participate in the program as a condition of the temporary restricted driver's license.
6. If the offender has been assigned to the program as a condition of parole, completion of the program means the offender has met the established time and conditions of the sentence or probation set by the Parole Board.

7. If the offender is a juvenile offender, completion of the program means the juvenile offender has met the terms and conditions of the Juvenile Court for completion of the 24/7 sobriety program.
8. The testing site shall enter the offender's completion of the program or termination of the program into the Sobriety Program Information System upon notification the offender has completed the program or has been terminated from the program.

**B. Re-entry into Program.**

1. The court may authorize an offender to re-enter the program after the offender has violated the program in accordance with terms and conditions established by the court.
2. The Juvenile Court may authorize a juvenile offender to re-enter the 24/7 Sobriety Program after the juvenile has violated the program in accordance with terms and conditions established by the juvenile court.
3. The Parole Board may authorize an offender to re-enter the program after the offender has violated the program in accordance with terms and conditions established by the Parole Board.
4. If an offender has violated the 24/7 program and participation in the program is a condition for a temporary restricted driver's license, the offender will be ineligible for an additional temporary restricted driver's license.

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